

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Improving Public Safety Communications in the 800 MHz Band)	WT Docket 02-55
)	
New 800 MHz Band Plan for Puerto Rico and the U.S. Virgin Islands)	

To: The Commission

Date: September 13, 2010

**REPLY TO
OPPOSITIONS TO PETITIONS FOR RECONCIDERATION**

Preferred Communications Systems, Inc. and its wholly-owned subsidiary (Preferred Acquisitions, Inc. "PAI"), referred to as "Preferred" and Charles D. Guskey, collectively referred to as "Petitioners," hereby respectfully responds to the Oppositions to the Petition for Reconsideration previously filed by the Petitioners in this proceeding.

I. SPRINT-NEXTEL ISSUES

A. Sprint's Claim that Preferred's Site Licenses Have Been Cancelled

Sprint-Nextel's opposition comments completely ignore the fact that the existence of Preferred's site licenses is confirmed in, and governed by the Settlement Agreement (between the FCC and Preferred) in the FCC Enforcement Bureau action No. 07-147. Pursuant to the Settlement

Agreement, Preferred and the FCC agreed that Preferred would relinquish certain site licenses and it would retain certain site licenses.

B. Sprint's Comments Re: Number of Channels Eligible for Relocation to ESMR Band

The FCC's *Third Report and Order* ("Order"), which is at issue here, clearly describes that Preferred's and North Sight's EA channels are to be relocated to the new ESMR Band on a 1:1 basis (see paragraph 13 of the Order). Sprint-Nextel clearly embraced the methodology of this channel movement when it is applied to "their" spectrum holdings. On page 8 (footnote 19) of their Opposition filing, Sprint-Nextel states they are "entitled to 165 channels in 800 MHz rebanding" and that ... "In the absence of Preferred it would receive 160 channels (of the 280 ESMR band) channels." Thus, for Sprint-Nextel to argue that Preferred and North Sight should have the number of EA licensed channels reduced is disingenuous at best.

The Commission has previously addressed conflicting arguments regarding EA licensees which also have site-based licenses. The Commission addressed the issue in its *Memorandum Opinion and Order* (released October 5, 2005), see paragraph 25. It again addressed the issue in the *Second Memorandum Opinion and Order*; the following is an excerpt from paragraph 10:

"After the *800 MHz Supplemental Order*, some non-ESMR EA licensees argued that the Commission had unnecessarily constrained their ability to implement ESMR systems on their combined EA and site-based spectrum. **In providing relief to these licensees in the 800 MHz MO&O, the Commission acknowledged the importance of "evaluating their systems as a whole** (even if portions thereof are licensed on a non-EA basis)," so as to place them "in a position comparable to that they currently occupy." Moreover, we believe that allowing EA licensees to relocate site-based licenses to the ESMR band makes it substantially less likely that the sitebased

portions of their systems would interfere with public safety and other high-site systems. **We note that we did not prohibit SouthernLINC from relocating its site-based licenses to the ESMR band and see no reason to treat other ESMR licensees differently.”**

C. Sprint’s Comments Re: Its Obligation to Relinquish Its Spectrum

Holdings Below 862 MHz

Sprint-Nextel somehow believes that it is appropriate to label Preferred’s arguments regarding the frequencies that Nextel is required (by FCC orders) to relinquish, as “nonsensical.” Preferred’s arguments are based on the clear and irrefutable FCC orders that require Nextel to relinquish all of its frequency/channel holdings below 862 MHz. Nextel’s Opposition filing (see page 12) suggests that the fact that Nextel has “not yet” vacated the frequencies impacts Preferred’s arguments; it does not. Furthermore, Nextel was required (by FCC orders) to have already vacated these frequencies, but has not for the simple reason that it doesn’t want to. Nextel was so adamant that it did not have to vacate certain frequencies until some unknown future date, that it filed an appeal of the FCC orders to the US Court of Appeals for the District of Columbia Circuit (see case No. 07-1416). The Court of Appeals denied Nextel’s petition and ruled in favor of the FCC. Thus, the only reason Nextel remains on these frequencies is that it has filed and received a series of waivers from the FCC.

II. MOTOROLA’S OPPOSITION

Motorola filed an Opposition consisting of vague and general comments. Their primary concern appears to be related to any delays in the rebanding process that might result from the petitions for

reconsideration. These concerns are without merit since the Petitions for Reconsideration will have no impact of the schedule for the physical rebanding in Puerto Rico.

Respectfully submitted,

**PREFERRED COMMUNICATION
SYSTEMS, INC.**

By: /S/ Charles M. Austin
Charles M. Austin, President

PREFERRED ACQUISITIONS, INC.

By: /S/ Charles M. Austin
Charles M. Austin, President

CHARLES D. GUSKEY

By: /S/ Charles D. Guskey
Charles D. Guskey, Individually